STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

ILLINOIS COMMERCE COMMISSION On Its Own Motion -vs- AMEREN ILLINOIS COMPANY d/b/a Ameren Illinois Reconciliation of revenues collected under power procurement riders with actual costs associated with power procurement expenditures.	)	Docket No. 13-0527

INITIAL BRIEF

Pursuant to the Notice of the Administrative Law Judge (ALJ) issued on December 4, 2014, the Staff of the Illinois Commerce Commission ("Staff") provides the following context and Staff's position in answer to the ALJs questions, which require the application of fundamental canons of statutory interpretation to answer.

> **Question 1: Explain what legal authority this Commission has to make the adjustments proposed by Ameren witness Mr. Perniciaro on pages 4-6 of Ameren Exhibit 4.0.**
>
> **Question 2: Explain what legal authority this Commission has to make adjustments for accounting errors that occurred outside the reconciliation period.**

The cardinal rule of statutory interpretation is to determine and give effect to the legislature's intent. *Hernon v. E.W. Corrigan Constr. Co*., 149 Ill. 2d 190, 195 (1992); *Sulser v. Country Mutual Ins. Co*., 147 Ill. 2d 548, 555 (1992). Where the statutory language is clear and unambiguous, the plain language as written must be given effect without reading into it exceptions, limitations or conditions that the legislature did not express and without resorting to other aids of statutory construction. *Davis v. Toshiba*

Machine Co., 186 Ill. 2d 181, 184-85, 710 N.E.2d 399 (1999); *Philip v. Daley*, 339 Ill. App. 3d 274, 280, 790 N.E.2d 961, 965-66 (2nd Dist. 2003) ("when a statute is unambiguous, it must be applied without resort to further aids of construction, and there is no need to rely upon an [administrative] agency's interpretation").

Moreover, the interpretation of a statute by means of construction aids to divine the intent of the legislature is only necessary if the language of the statute is ambiguous. *In re Consolidated Objections to Tax Levies of School Dist. No. 205*, 193 Ill. 2d 490 (2000). Where the language of a statute is plain and unambiguous, there is no occasion for construction to ascertain the meaning of a statute, although the language may be considered unwise and to impair seriously the statute as a whole. *Bridgestone/Firestone, Inc. v. Aldridge*, 179 Ill. 2d 141 (1997). As the U.S. Supreme Court has explained: "[I]n interpreting a statute a court should always turn to one cardinal canon before all others… [C]ourts must presume that a legislature says in a statute what it means and means in a statute what it says there." *Connecticut Nat'l Bank v. Germain*, 112 S. Ct. 1146, 1149 (1992). Indeed, "[w]hen the words of a statute are unambiguous, then, this first canon is also the last: `judicial inquiry is complete.'" *Id.*

The language of the statute must be afforded its plain, ordinary and popularly understood meaning (*In re Detention of Lieberman,* 201 Ill. 2d 300, 308 (2002)*; Bubb v. Springfield School District 186, 167 Ill. 2d 372, 381* (1995))*,* and statutory language is to be given its fullest, rather than narrowest, possible meaning to which it is susceptible (*Lake County Board of Review v. Property Tax Appeal Board,* 119 Ill. 2d 419, 423 (1988)). Courts will not depart from the plain language of a statute by reading into it exceptions, limitations or conditions that conflict with the express legislative intent. *Petersen v.*

Wallach, 198 Ill. 2d 439, 446 (2002)*; Yang v. City of Chicago,* 195 Ill. 2d 96, 103 (2001). All provisions of a statutory enactment must be viewed as a whole. *Michigan Ave. Nat. Bank v. County of Cook,* 191 Ill. 2d 493, 504 (2000)*; Bubb,* 167 Ill. 2d at 382. Lastly, in construing a statute, we presume that the General Assembly, in its enactment of legislation, did not intend absurdity, inconvenience or injustice. *In re Lieberman,* 201 Ill. 2d at 309*; Burger v. Lutheran General Hospital,* 198 Ill. 2d 21, 40 (2001).

Section 16-111.5(l) is clear and unambiguous when it states that:

> (l) An electric utility *shall* recover its costs incurred under this Section, including, but not limited to, the costs of procuring power and energy demand-response resources under this Section.

220 ILCS 5/16-111.5(l) (emphasis added).

Because this provision of Section 16-111.5(l) is clear and unambiguous, the analysis of its meaning is essentially finished.

Section 16-111.5(l) also clearly and unambiguously clearly states that electric utilities shall recover such costs through a tariff filing:

> The tariffs *shall* include a formula rate or charge designed to pass through both the costs incurred by the utility in procuring a supply of electric power and energy for the applicable customer classes with no mark-up or return on the price paid by the utility for that supply, plus any just and reasonable costs that the utility incurs in arranging and providing for the supply of electric power and energy.

Id. (emphasis added).

Moreover, and to the point in response to the ALJ's second question (in Staff's opinion), Section 16-111.5(l) also clearly and unambiguously states that:

> The formula rate or charge shall also contain provisions that ensure that its application does not result in over or under recovery due to changes in customer usage and demand patterns, and *that provide for the correction, on at least an annual basis, of any accounting errors that may occur.*

Id. (emphasis added).

Accordingly, not only does the Commission have the express legal authority to make the adjustments proposed by Ameren witness Mr. Perniciaro that provide for adjustments for accounting errors that occurred outside the reconciliation period, but *it must do so*. Section 16-111.5 does not provide any guidelines or limitations as to whether adjustments for costs that occur outside of the reconciliation period may be approved, and the rules of statutory interpretation require that none be inferred. *See, e.g., Peterson*, 198 Ill. 2d at 446*; Yang*, 195 Ill. 2d at 103. In light of this and in conjunction with the language on the correction of accounting errors, the "fullest possible meaning" of the statute is that adjustments from outside of the reconciliation year are authorized. Furthermore, any interpretation of the statute that would permit only adjustments from within the reconciliation year would lend itself to the absurd result that accounting errors from previous reconciliation periods, which are specifically recoverable under the statute, would in fact, not be recoverable, as they fall outside the reconciliation period.

The General Assembly specifically chose the word "shall" in directing the Commission on how to proceed regarding the recovery of these costs. Each word, clause and sentence of the statute, if possible, must be given reasonable meaning and not rendered superfluous. *Sylvester v. Industrial Com'n,* 197 Ill. 2d 225, 232 (2001). The mandatory "shall," with no further exceptions or limitations, leaves the Commission little discretion to do anything but follow the plain meaning of Section 16-111.5(l), which is exactly what the Commission has already done in previous reconciliations.

In Docket No. 12-0548, the Commission approved the reconciliation of revenues collected under power procurement riders with the actual costs incurred in connection

with procurement activities as defined in the tariffs of each of Ameren's three rate zones during the reconciliation period beginning June 1, 2010 and ending May 31, 2011. *Illinois Commerce Commission vs. Ameren Illinois Co.*, Final Order ICC Docket No. 12-0548, 6 (June 17, 2014). That Final Order notes that various accounting adjustments were made in the reconciliation. *Id*. at 5. In Docket Nos. 11-0354/0355/0356 (Cons.), the Commission approved the reconciliation of revenues collected under power procurement riders with actual costs incurred in connection with procurement activities during the reconciliation period beginning June 1, 2009 and ending May 31, 2010. *Illinois Commerce Commission vs. Ameren Illinois Co., et. al.*, Final Order ICC Docket Nos. 11-0354/0355/0356 (Cons.), 10-11 (July 31, 2013). In those consolidated Dockets, both Staff and the Company filed testimony regarding the adjustment for costs under Section 16-111.5 and the requirement that there is no over or under recovery of costs. *Id*. at 6. The Final Order notes that the Company and Staff agreed upon an approach for future adjustments, and the Commission found the approach to be reasonable. *Id*. at 7. The adjustments in the instant Docket proposed by Mr. Perniciaro on pages 4-6 of Ameren Exhibit 4.0 follow the approach approved by the Commission in Docket Nos. 11-0354/0355/0356 (Cons.). Because the Commission has previously approved this methodology, it may be bound to follow it here.

It is a well-established doctrine of administrative law that the legislature can establish broad policy guidelines and leave the detailed application of those guidelines to the administrative agency charged with carrying them out. *Lake County Board of Review v. Illinois Property Tax Board of Appeal*, 119 Ill. 2d 419, 427 (1988). When an administrative agency legally undertakes to do so, the agency may be bound by the

resulting construction. *Gatica v. Illinois Dept. of Public Aid*, 98 Ill. App. 3d 101, 106 (1st Dist. 1981). An agency may not abruptly deviate from such prior rulings without prior notice of its intended change. *Id*. While deference is generally accorded to the decision of an agency, the courts do not hesitate to intervene when the decision is against the manifest weight of the evidence or is arbitrary, unreasonable or capricious. *Id*.

In this Docket, Ameren is following the proscribed manner for recovery of these costs under the Commission's own orders in Docket Nos. 12-0548 and 11-0354/0355/0356 (Cons.). The Commission has authority to allow the recovery under the clear and unambiguous language of Section 16-111.5 of the Public Utilities Act. Given that the Commission has previously undertaken an interpretation of 16-111.5, it may be bound by that interpretation, as no notice was given of an intended change.

WHEREFORE, for each of the foregoing reasons, Staff respectfully requests that the Commission's order in this proceeding reflect all of Staff's recommendations and approve the reconciliation.

Respectfully submitted,

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MICHAEL J. LANNON
KELLY A. TURNER
Office of General Counsel
Illinois Commerce Commission
160 N. LaSalle Street, Suite C-800
Chicago, IL 60601
Phone: (312) 793-2877
Fax: (312) 793-1556
mlannon@icc.illinois.gov
kturner@icc.illinois.gov

Counsel for the Staff of the Illinois Commerce Commission

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